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Jennifer J. Johnson, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551.

RE: 12 CFR Part 226 Truth in Lending Proposed Rule

Dear Ms. Johnson:

Please consider the following comments related to the 12 CFR Part 226 Truth in Lending Proposed Rule that is currently under consideration.

Generally

- We support the Federal Reserve's efforts to address subprime lending abuses. Non-bank lenders, servicers, brokers, and others involved in the mortgage lending business should be subject to the same lending requirements as federally insured depository institutions. An enforcement mechanism that is comparable to the system for insured depository institutions should be established to oversee these non-bank financial firms.

Provisions Applicable to Higher-Priced Loans

- The test for higher-priced loans is too broad and would encompass a significant percentage of prime loans. This would impose additional costs for a large portion of the mortgage market with little or no offsetting benefit. Therefore, the Federal Reserve should widen the spread over Treasury securities or should use an index that better reflects mortgage market rates.
- When the yield curve is inverted, some popular loan products would likely be classified as higher-priced loans under the proposed amendments. These products include adjustable rate mortgages, jumbo loans, small mortgage loans, loans with zero upfront closing costs. If these products were to be classified as higher-priced loans due to the market environment at a particular point in time, prime consumers would be faced with increased loan costs and limited product choice.
- The proposed underwriting and escrow requirements, as well as the limitations on prepayment penalties for higher-priced mortgages, should not be required for prime borrowers. This is one more reason why the Federal Reserve should amend the definition of higher-priced mortgages to include only subprime loans.

- Lenders that make higher-priced loans could be exposed to increased litigation, compliance, and reputation risks. This underscores the importance of defining higher-priced loans in a way that does not include loans to prime borrowers.
- We request that any final rule and its accompanying commentary clarify underwriting terms and standards for higher-priced loans that are likely to be litigated in the future. Specifically, we request that the Federal Reserve provide clear guidance regarding the meaning of the following terms: income, debt, ordinary living expenses, and residual income. In addition, the Federal Reserve should specify what an institution must do in order to “consider” these factors. We also request that the Federal Reserve provide examples of what would constitute a “pattern or practice” of failing to consider a borrower’s ability to repay a loan.

Provisions Applicable to All Mortgage Loans

- We support the proposed broker disclosure and fee agreement. Consumers should receive information that is more specific about a broker’s role and compensation in a mortgage transaction. However, depository institutions will have no way of knowing whether a broker fee agreement was timely signed and therefore should be able to rely on the face of the fee agreement.
- The proposed appraisal provisions are consistent with existing rules and regulatory guidelines that apply to federally insured depository institutions. It is appropriate to expressly prohibit all mortgage market participants, including mortgage brokers, from improperly influencing an appraisal. We are concerned, however, about the provision that would prohibit a lender from extending credit if it knows or “has reason to know” that a broker improperly influenced an appraiser. The “reason to know” standard is broad, ambiguous, and subject to multiple interpretations. It should be deleted and replaced with a standard that prohibits a lender from making a loan if the lender had actual knowledge that the appraisal was inflated.
- We generally support the adoption of general rules that would govern mortgage servicing practices. The proposed servicing standards are generally consistent with the business practices of depository institutions. However, we request that the Federal Reserve make the following clarifications in order to take industry practices into account.
 - Fee schedules. Servicers should not be required to disclose third-party fees that vary by geographic location. Servicers should be required to disclose only standard fees or common fees, such as non-sufficient funds fees or duplicate statement fees.

- Crediting an account. Servicers commonly engage in effective dating whereby they credit the payment back to the date of receipt. We request that the Federal Reserve specify that this practice continues to be permitted.
- The Federal Reserve should conduct consumer testing in order to determine whether the proposed advertising disclosures would be useful to consumers or whether such detailed information would be more helpful if it were provided in other disclosure contexts.
- Electronic advertisements. We support the proposed disclosure alternative that would permit TV and radio advertisements to provide a toll-free telephone number that consumers may call in order to receive more information about the product. The Federal Reserve should provide similar flexibility for Internet advertisements by specifying that lenders may use links in online advertisements in order to provide required mortgage disclosure information.
- We support the proposed prohibited acts and practices in connection with mortgage advertisements. For example, creditors could not use the word “fixed” to refer to rates or payments when the rate or payment would be “fixed” for a limited time, unless certain conditions are satisfied. Also, advertisements could not display the name of the consumer’s current lender in an advertisement unless the ad also prominently discloses that it is not associated with the consumer’s current lender. These practices are not fair and have been used by unregulated mortgage market participants to mislead consumers. Lenders should not be permitted to make statements about loan products that are not true.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rob Barnes', with a long horizontal flourish extending to the right.

Robert J. Barnes
Chief Lending Officer
PriorityOne Bank